IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

WRIT PETITION NO. 2973 OF 2006

Shri Kishor Narayan Vartak. ... Petitioner.

V/s.

M/s. The Sangli Zilla Kamgar
Co-Op. Bank Ltd. & Ors. ... Respondents.

....

Mr. V.P. Vaidya for the Petitioner.

Mr. A.S. Peerzada i/b. Burhan V. Bukhari for the Respondents.

CORAM : DR. D.Y.CHANDRACHUD,J.

11TH DECEMBER, 2006.

P.C. :

1. The Petitioner was a cashier engaged by the First Respondent which is a Co-operative Bank. A charge-sheet was issued to the Petitioner on 20th March 1989. The allegations therein were that while working as a Cashier, the Petitioner made payments of a total of five cheques in the amount of Rs.79,466/- without the cheques bearing the signature of the account holder, the signature of the recipient and in violation of the established banking procedures. The charge was that the Petitioner was guilty of dishonesty and fraud in connection with the

business of the employer, of a habitual breach of the rules of the establishment and of the commission of an act subversive of discipline or good behaviour on the premises of the establishment. The charge was held to be established in the disciplinary enquiry that was convened by the Bank and an order of dismissal was passed. The Petitioner challenged the order of dismissal in proceedings before the Labour Court under the Bombay Industrial Relations Act, 1946. The Labour Court held that the enquiry was proper but came to the conclusion that the findings were perverse. Thereupon, the Bank availed of an opportunity to lead evidence in support of the charge of misconduct. The Labour Court allowed the application and passed an order of reinstatement with full backwages with effect from 1st September 1990 and continuity of service. The order of the Labour Court was challenged by the Bank in appeal. By an order dated 16th September 2006, the Industrial Court allowed the appeal. The Industrial Court held that the charge of misconduct stood established; that in breach of the established procedures, the Petitioner as a Cashier had paid the amounts under the five cheques without the signature of the drawer and the passing officer. The Industrial Court has also made a reference to the admissions of the

workman himself during the course of his evidence which established his misconduct. In these circumstances, the order of the Labour Court was set aside.

2. On behalf of the Petitioner, the order of the Industrial Court has been challenged on the grounds that :

(i) The Bank had acted discriminatorily by letting off the Clerk and the Ledger Keeper both of whom were also involved in the act of misconduct;

(ii) The account in question was of a Chairman of the Bank and at the worst, it can be assumed, that the Petitioner had acted under the pressure of his higher authorities including the Branch Manager who had passed the cheques;

(iii) A Committee which was set up by the Bank had recommended that the employees concerned in the transaction, including the Petitioner in the petition should be reinstated; and

(iv) It is not the case of the Bank that the erstwhile

Chairman had not received the money which was paid by the Petitioner under the cheques.

3. While considering the merits of the submissions which have been urged on behalf of the Petitioner, it would at the outset be necessary to refer to the evidence of the workman himself. This becomes necessary since apart from anything else, the Industrial Court was of the view that the admissions which came to be elicited during the course of cross-examination, established the misconduct of the workman. During the course of his cross-examination, the Petitioner made the following admissions :-

> " Witness volunteers that at the time of encashment of the cheques, the then chairman was present in the chairman's cabin. I myself did not make any efforts to obtain the signature of the chairman on the cheques. I did not make any attempt to obtain the signature of chairman on the back side of the cheque while making payment. The Opponent bank sustained monetary loss of Rs.79,440/- in the transaction in question. The procedure of payment of cheque is common to all the customers. It is true that the routine procedure pertaining to encashment of cheque was not followed in respect of cheques Ex.C-16 to C-20. Myself and the branch manager were given charge sheet pertaining to the transaction of Ex.C-16 to C-20. S.B. Shinde was the then branch manager. It is true that enquiry was held against the then branch manager and his services were terminated by the opponent a like me. I

> issued letter to the opponent dated 27.2.1989 which is at Ex.19 in the enquiry proceedings. This letter bears my signature and signature of S.B. Shinde, S.S. Deshmukh, M.R. Mulik, V.M. Shirke. It is true that we admitted guilt and prayed for reinstatement in this letter."

4. The Labour Court, it must be noted took cognizance of the admissions of the workman in paragraph 17 of its judgment. Having noticed the admissions of the workman, the Labour Court nonetheless held in favour of the workman on the ground that the management had not placed any substantive material on the record or material to establish its point of view. The finding of the labour Court was as follows :-

> " In this case after providing opportunity to the opponent to lead evidence to prove the charges, the opponent examined only one witness i.e. Shri T.B. Gunjal and thus in this case, the opponents, did not place on record any new material or evidence to substantiate their stand point and again opponents are relying on the evidence already adduced on record. It is also admitted that patently there is no habitual breach of banking rules and regulations on the part of the applicant."

5. The Labour Court was manifestly in error in holding that no substantive evidence was produced by the management. The Bank after the Labour Court had found that the findings of the enquiry was perverse availed of the opportunity to lead evidence in support of the charge

of misconduct. On behalf of the Bank, evidence was adduced of Shri T.B. Gunjal. The Bank during the course of its evidence established the procedures which were required to be followed before a cheque was paid. In fact there was no dispute about the reported procedures. The Petitioner had himself admitted that he had not made any attempt to obtain the signature of the Chairman on the cheques and that the cheques were all unsigned. The Petitioner had admitted that he had not followed the procedure that is required to be followed. In these circumstances, the Industrial Court was entirely justified in holding that the Labour Court had failed to give adequate weight to the admissions of the workman himself which established the act of misconduct.

6. In so far as the question of discrimination is concerned, from the evidence of the workman as has been noted above, it appears that the Bank had also proceeded against the then Branch Manager Shri S.B. Shinde and the services of the employee were terminated in the same manner as that of the petitioner. The Bank had also proceeded against Shri S.B. Shinde, Shri S.S. Deshmukh, Shri M.R. Mulik and Shri B.M. Shirke, who were employed as Ledger Keeper and Senior Clerks. In fact, the workman

himself referred to a letter dated 27th February 1989 (Exhibit 19) by which, all these employees admitted their guilt, but prayed for reinstatement. The Petitioner was a signatory to the aforesaid letter wherein the Petitioner had accepted and admitted his own guilt. Counsel appearing on behalf of the First Respondent stated before the Court that against the order of termination, the Branch Manager instituted a proceeding under the Bombay Industrial Relations Act, 1946 in which the Bank has raised the preliminary objection with regard to the maintainability of the proceedings on the ground that the Branch Manager is not a workman. That proceeding is still pending. In so far as the three other employees (who were Ledger Keeper and Senior Clerks respectively) are concerned, Counsel appearing on behalf of the First Respondent stated that the Labour Court held that the enquiry was fair and proper and that the findings were not perverse. However, the punishment of dismissal was held to be disproportionate and was set aside. The Bank accepted the order of the Labour Court and granted re-instatement to the aforesaid workman.

7. The material which has been placed on record of the proceeding before the Court below clearly does not

establish any discriminatory action on the part of the Bank. The Bank proceeded against all the employees. The services of all the employees were terminated. This, in fact, is accepted by the Petitioner himself in the course of cross examination. The proceedings adopted by the Branch Manager are pending before the appropriate Court. It cannot be said that the position of a Cashier was of the same order in the hierarchy as the Ledger Keeper/Clerks in whose case, the Bank accepted the order of the Labour Court. Whether the Bank should or should not have accepted the findings of the Labour Court in those cases does not fall for determination. In any case, having regard to the responsibilities of a Cashier and the duties cast upon him, it cannot be said that the Bank was not justified in taking the view that it has taken in the case. The fact that the Petitioner was an employee of a Cooperative Bank who was under pressure of the then Chairman is no ground for this Court to exercise the jurisdiction under Article 226. The recommendations of a Committee appointed by the Bank are only recommendatory in nature. The Bank can by no means be held to be in error in refusing to condone an act of misconduct. The Industrial Court has given cogent reasons for coming to the conclusion that the Labour

Court was not justified in interfering with the order passed in the disciplinary proceedings. The order of the Industrial Court is logical and consistent and is entirely in accordance with law. No case for interference under Article 226 is made out. The Petition is accordingly dismissed.